

## Sound Transit/WSDOT Re-Alignment Issue Paper No. 46

<b>TOPIC:</b>	Magnuson-Stevens Act (MSA) - Essential Fish Habitat (EFH)
<b>ACTION SPONSOR TEAM:</b>	Environmental Action Team
<b>PRIMARY AUTHOR(S):</b>	Sheila North (FTA)
<b>APPLICABLE PROJECTS:</b>	All Regional Express projects
<b>ISSUE:</b>	For projects that involve FTA and FHWA as co-leads, how will MSA compliance be delegated and implemented?
<b>CURRENT STATUS:</b>	Final
<b>DATE APPROVED:</b>	September 6, 2001

### **Background/Process:**

FTA and FHWA are required to consult with NMFS in coordination with their environmental processes on all current and future projects undergoing environmental determination which “may adversely affect” fish habitat. The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established procedures designed to identify, conserve, and enhance Essential Fish Habitat (EFH) for those species regulated under a Federal fisheries management plan. In Washington State EFH is regulated by the Pacific Fisheries Management Council (PFMC).

### **FTA Process:**

There are four components of an EFH consultation.

- 1) **Notification:** The Federal agency provides notification to NMFS of an activity that “May Adversely Affect” EFH (Note that this differs from the ESA determinations of “NE,” “MANLAA,” “MALAA,” and “BE” (Beneficial Effect);
- 2) **EFH Assessment:** The federal agency provides a description of the proposed action, an analysis of effects, and effect determination to NMFS;
- 3) **Conservation Recommendations :** NMFS provides conservation recommendations to the Federal agency within 60 days; and



- 4) **Federal Agency Response:** the Federal agency provides written response to NMFS within 30 days of receiving NMFS' conservation recommendations but at least 10 days prior to taking the Federal action. (Note: If no conservation measures are recommended by NMFS, an action agency response is not required and consultation is completed.)

Please note that an EFH Assessment template and the official EFH finding from NMFS dated July 2001 are attached as part of this issue paper. The template is intended to aid in ST Regional Express projects requiring documentation of potential adverse affects on EFH.

### **Model Comparison**

On July 16, 2001 FTA concurred with the National Marine Fisheries Service (NMFS) that FTA's existing NEPA and ESA section 7 environmental review processes may also be used for EFH consultations provided that FTA follows NMFS' guidance for integrating EFH consultations into ESA section 7 consultations (see Finding). EFH consultation will primarily be addressed as part of the Biological Assessment (BA) for ESA. If an ESA consultation is not required but adverse affects to EFH are expected, the EFH consultation can also be integrated into the NEPA process. The EFH assessment in the BA should be summarized in the NEPA Environmental Assessment, EIS, or DCE.

FHWA is currently in the process of formalizing its MSA consultation process with NMFS. No significant difference is expected to exist between the FTA and FHWA models.

### **For more information on MSA, the following websites may be useful:**

NMFS Office of Habitat Conservation EFH page:

<http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat>

NMFS Northwest Region EFH page:

<http://www.nwr.noaa.gov/1habcon/habweb/msa.htm>

Pacific Fisheries Management Council:

<http://www.pcouncil.org/>

Interim Final Rule: Implementation of Essential Fish Habitat Provisions:

<http://www.access.gpo.gov/nara/cfr/waisidx/50cfr600.html>

### **Decisions**

For any ST project involving FTA as lead or co-lead (including FTA/FHWA co-lead projects), or for other projects as agreed by FTA and FHWA, MSA compliance shall occur according to FTA guidance and procedures.

Issues associated with MSA and EFH will typically be addressed as a separate evaluation included in the BA or other biological evaluation or analysis done for a project, using the template attached to this issue paper. If there is no BA prepared for the project, the MSA/EFH discussion will be included in the NEPA document.

The environmental document (EA, EIS, DCE, etc.) will reference the MSA/EFH discussion in the BA and summarize the conclusions.

**PROGRAM ACTION TEAM DECISION ON ISSUE PAPER NO. 45:**  
**Common Rule - Adhering to Conflict of Interest Requirements in Contracts with Environmental Consultants**

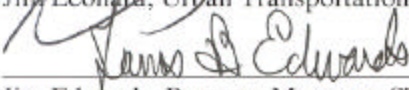
AGREED TO ON JUNE 5, 2001 BY:



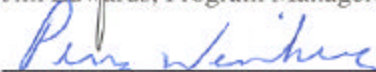
Linda Gehlke, Deputy Regional Director Administrator, FTA



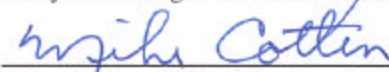
Jim Leonard, Urban Transportation & Environmental Engineer, FHWA



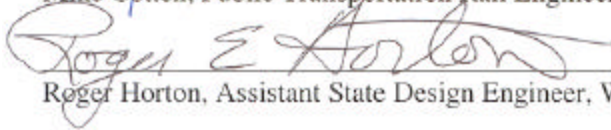
Jim Edwards, Program Manager, ST



Perry Weinberg, Environmental Compliance Manager, ST



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